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**BEFORE THE  
LAND CONSERVATION AND DEVELOPMENT COMMISSION  
OF THE STATE OF OREGON**

**IN THE MATTER OF THE REVIEW OF  
THE DESIGNATION OF URBAN  
RESERVES BY METRO AND RURAL  
RESERVES BY CLACKAMAS COUNTY,  
MULTNOMAH COUNTY, AND  
WASHINGTON COUNTY**

**PETITIONERS' BRIEF TO LCDC ON  
CONSIDERATION OF THE OREGON  
COURT OF APPEALS REMAND  
DECISION**

Petitioners Springville Investors, LLC, Katherine Blumenkron, and David Blumenkron, appearing through their counsel, Christopher James, submit the following arguments regarding the Court of Appeals decision *Barkers Five, LLC v. LCDC*, 261 Or App 259(2014) (hereinafter “Opinion”) and the Scheduling Order of this Commission. The Petitioners’ arguments are grouped under the subject matter presented by the Commission’s Order.

**Barkers Five Opinion**

**ARGUMENT 1**

This Opinion held the LCDC decision unlawful regarding the rural reserve designation of area 9D and ordered “on remand, LCDC must determine the effect of that error on the designations of reserves in Multnomah County in its entirety.” The word “designations” is plural. Petitioners submit the Opinion remand requires LCDC to immediately vacate all designations of rural reserve in Multnomah County.

## **ARGUMENT 2**

Petitioners submit that to properly consider the “effect of that error” LCDC must consider the factors used to determine the designation of Area 9D, and determine if such factors affected or were affected by other study areas. In addition LCDC must consider the operation of other governing statutes, such as 197.040 *et seq.* to the Multnomah County designation of rural reserves to the Petitioners’ property which was found suitable for urban reserve designation.

## **House Bill 4078**

## **ARGUMENT 3**

HB4078 revisits considerable LCDC process and rulings, some of which effect the designation of Petitioners’ property as rural reserve. They include the following:

HB4078 provides in Section 8.1 “(1) for the purpose of ORS 195.065, the City of Hillsboro and Tualatin Valley Fire and Rescue shall enter into an urban service agreement for the unincorporated communities of Reedville, Aloha, Rock Creek and North Bethany in Washington County (emphasis added).” The effect of this law and its’ performance is to provide urban services to North Bethany.

The Petitioners’ land is in Area 9B which is contiguous to North Bethany. A basis for the determination of Area 9B as Rural Reserve was the absence of urban services to service the Areas 9B (hereinafter the alleged “Services Deficit”). (See Compliance Order, at 122.)

HB4078 and its performance removes any legitimate basis for a finding of a Services Deficit. The “L” area of 9B, as defined in earlier submissions, does not have significant natural landscape features. Other areas of 9B allegedly have such features. Accordingly, because of the removal of the Services Deficit, and a lack of natural landscape features the “L” portion of East

Bethany no longer has the factors or criteria for a rural reserve designation and should be designated urban reserve.

#### **ARGUMENT 4**

If the Commissioner does not designate the Petitioners' land alone, or as a part of the "L" area, urban reserve, it must allow the Petitioners' full constitutional (state and federal) due process before any further designation is applied to their property. The requirements for such due process include, but are not limited to, adequate opportunity to present evidence and challenge opposing evidence, to confront witnesses, and to have all substantive determinations considered and rendered by an impartial trier of fact.

Neither the submission of this brief nor any arguments or statements contained herein shall represent a waiver or limitation of any claim, demand, right or privilege represented by Petitioners' action now pending in the United States Federal District Court of Oregon (Blumenkron, et al. v. Eberwein, et al., case no. 3:12-cv-00351-BR) and all of such claims are fully reserved. The submission of this brief does not waive any contention Petitioners could make that the Commission Scheduling Order is, itself, a predetermination of issues and in violation of constitutional requirements.

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DATED this 25th day of September, 2014.

Respectfully submitted,

THE JAMES LAW GROUP LLC

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